IN THE SUPREME COURT OF THE STATE OF DELAWARE

KAITLYN MURRAY, 1	§
	§ No. 394, 2013
Respondent Below,	§
Appellant,	§ Court Below—Family Court
	§ of the State of Delaware,
V.	§ in and for New Castle County
	§ File No. 12-02-02TN
DIVISION OF FAMILY SERVICES,	§ Petition No. 12-39755
	§
Petitioner Below,	§
Appellee.	§

Submitted: December 24, 2013 Decided: February 7, 2014

Before BERGER, JACOBS, and RIDGELY, Justices.

ORDER

This 7th day of February 2014, upon consideration of the appellant's opening brief filed pursuant to Supreme Court Rule 26.1(c), her attorney's motion to withdraw, and the responses filed by the Division of Family Services ("DFS") and the Guardian ad Litem ("GAL"), it appears to the Court that:

(1) The appellant, Kaitlyn Murray ("Mother") filed this appeal from the Family Court's order, dated June 24, 2013, which terminated her

¹ The Court previously assigned pseudonyms to the appellant pursuant to Supreme Court Rule 7(d).

parental rights with respect to her two minor children ("the Children").² Mother's appointed attorney has filed a brief and motion to withdraw pursuant to Rule 26.1(c). Counsel asserts that she has made a conscientious review of the record and the law and can find no arguable grounds for appeal. Mother did not submit any issues for this Court's consideration on appeal. DFS and the GAL have filed responses to the brief and have moved to affirm the judgment below.

(2) On August 29, 2011, DFS filed an emergency petition for custody of the Children, alleging that the Children were dependent and/or neglected in their parents' care. A preliminary protective hearing was held on September 7, 2011. Mother stipulated that the Children were dependent due to her ongoing substance abuse issues. Because Mother had obtained a lifetime Protection from Abuse ("PFA") Order against the Father, and no other family members were willing and able to care for the Children, custody of the Children was continued with DFS. Thereafter, the Family Court held an adjudicatory hearing on October 5, 2011, at which both parents appeared and stipulated to the Children's dependency. Thereafter, the Family Court held two dispositional hearings and three review hearings.

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² The Family Court's order also terminated the parental rights of the children's father ("the Father"). That portion of the Family Court's order is not before the Court for review.

- (3) The evidence presented at the hearings showed that Mother was non-compliant with her case plan. She could not maintain steady employment, did not have stable housing, failed to complete drug treatment, failed to complete domestic violence counseling, failed to complete parenting education, continued to see the Children's father despite the PFA, and inconsistently visited the Children. On September 20, 2012, the Family Court held a permanency hearing at which time the goal was changed from reunification to termination of parental rights (TPR) due to Mother's failure to make necessary progress on her case plan. The TPR hearing was held on March 19, 2013 and April 10, 2013. At the hearing, DFS presented the testimony of numerous witnesses familiar with the Children and their case, including Mother, a drug counselor, a DFS case worker, a therapist, a parent aide, and the Children's foster mother.
- (4) The testimony established that Mother had a tumultuous history involving domestic violence with the Father, which culminated in a lifetime PFA against him. Evidence showed that Mother could not sever her relationship with the Father—and repeatedly had contact with him following the entry of the PFA—despite warnings from her case worker that continued contact with the Father jeopardized her chances for reunification with the Children. In addition, Mother's visits with the Children were sporadic, and

she neglected the Children's medical and school appointments. The evidence established that Mother has a history of substance abuse but failed to complete any substance abuse treatment. Mother also failed to complete mental health treatment and failed to learn necessary parenting skills. At the time of the hearing, Mother remained unemployed with unstable housing.

- (5) Following the hearing, the Family Court found, based on clear and convincing evidence, that there was a statutory basis for termination, in that (a) Mother had failed to adequately plan for the Children's emotional and physical needs, and (b) termination of Mother's parental rights was in the Children's best interests.³ The Family Court also found that the Children had been in DFS' care for more than one year⁴ and that failure to terminate the parental relationship would result in continued emotional instability and physical risk to the children.⁵
- (6) This Court's review of a Family Court decision to terminate parental rights entails consideration of the facts and the law as well as the inferences and deductions made by the Family Court.⁶ To the extent that the

³ 13 *Del.C.* § 1103(a)(5) (2009).

⁴ *Id.* § 1103(a)(5)a1.

⁵ *Id.* § 1103(a)(5)a5.

⁶ Wilson v. Div. of Family Servs., 988 A.2d 435, 439-40 (Del. 2010).

Family Court's rulings of law are implicated, our review is *de novo*. To the extent that the issues on appeal implicate rulings of fact, we conduct a limited review of the factual findings of the trial court to assure that they are sufficiently supported by the record and not clearly wrong. If the trial judge has correctly applied the law, our review is limited to abuse of discretion.

- (7) In reviewing a petition for termination of parental rights, the Family Court must employ a two-step analysis. First, the court must determine, by clear and convincing evidence, whether a statutory basis exists for termination. Second, the court must determine, by clear and convincing evidence, whether termination of parental rights is in the child's best interests.
- (8) We have reviewed the parties' positions and the record below very carefully. We conclude that there is ample record evidence to support the Family Court's termination of Mother's parental rights on the statutory

⁷ *Id.* at 440.

⁸ Powell v. Dep't of Servs. for Children, Youth & Their Families, 963 A.2d 724, 731 (Del. 2008).

⁹ *Id*.

¹⁰ 13 *Del.C.* § 1103(a).

¹¹ Shepherd v. Clemens, 752 A.2d 533, 537 (Del. 2000).

¹² *Id*.

basis that she had failed to plan adequately for the Children and that termination was clearly in the Children's best interests. We find no abuse of discretion in the Family Court's factual findings and no error in its application of the law to the facts. Accordingly, we affirm the judgment below.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Jack B. Jacobs
Justice